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HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal M.P. No. 210 of 2007

APPLICANT

Abdul Khan

Vs.

RESPONDENT

The State of Chhattisgarh

Order post for 21-08-2007

Sd/-
DHIRENDRA MISHRA
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal M.P. No. 210 of 2007

APPLICANT

Abdul Khan, S/o Talim Khan, aged about 51 years, R/o Rasulpur, Ambikapur, Police Station Ambikapur, Distt. Surguja (CG)

Vs.

RESPONDENT

The State of Chhattisgarh, through Police Station Ambikapur, District Surguja (C.G.)

SB: Hon'ble Shri Justice Dhirendra Mishra, J.

Shri Manoj Paranjpe, Counsel for the applicant.

Shri G.K. Beriwal, Dy. Advocate General for the State.

ORDER

(31-8-2007)

The petitioner by the instant petition under Section 482 of Cr.P.C. has prayed for setting aside the order dated 30-3-2007 passed by the 1st Additional Sessions Judge, Surguja, Ambikapur in Criminal Revision No. 23/2007 and discharging him from the charges framed against him. The Chief Judicial Magistrate, Ambikapur Surguja vide order dated 8-1-2007 passed in Criminal Case No. 328/2005 has framed charge under Section 420, 468, 471 and 120B of I.P.C. The petitioner preferred a criminal revision against the above order on the ground that there is no oral or documentary evidence available on record and prayed for discharging him from the above charges, however the above revision has been dismissed by the impugned order.

2. Learned counsel for the petitioner submits that if the material available on record is accepted in its entirety as correct and true, in that case also, case for commission of offence punishable under Sections 420, 468, 471 and 120B of I.P.C. is not made out. He submitted that on the basis of enquiry report of the petitioner dated 17-9-2004, under valuation of the gift deed by main accused Ramesh Agrawal resulting in huge monetary loss to the State Government came to the fore, however, the Investigating Officer with a malafide intention of saving main accused, has arrayed the petitioner as accused

instead of making him main prosecution witness. It is argued that imposition of penalty on the basis of valuation of gift deed and evasion of stamp duty by the Collector of Stamp, Surguja was challenged by Saurabh Agrawal in the Board of Revenue where the Board of Revenue by the order dated 25th May, 2007 has allowed the appeal and set aside the order dated 5-5-2006 passed by the Collector of Stamp which has attained finality. Reliance is placed on State of Haryana and others -v- Ch. Bhajan Lal and others reported in AIR 1992 SC 604 and Jitendra Kumar Jain -v- State of Delhi and others reported in (1998)8 SCC 770.

3. On the other hand, learned counsel for the State submitted that the petitioner in conspiracy with the main accused Ramesh Agrawal provided him the Maintenance Khasra of the land wherein it was mentioned that the property in question is situated at Implipara whereas according to the original Maintenance Khasra, the property in question is situated in Deviganj. Valuation of the property was made considering the same to be residential though as per guidelines of the Collector, valuation of the same ought to have been made taking the same to be a commercial plot and accordingly stamp duty ought to have been fixed and thereby substantial loss of revenue was caused to the State. The Maintenance Khasra annexed with the ^{by gift deed} stamp duty is signed by the petitioner and the same is in variance with the entry in the Maintenance Register.

4. I have heard learned counsel for the parties.

5. Learned trial Court after going through the documents available on record has prima facie arrived at a conclusion that the above offences are made out against the petitioner. Learned Additional Sessions Judge by the impugned order taking into consideration that the copy of Maintenance Khasra attached with the gift deed which was produced at the time of registration was given by the petitioner under his own signature has prima facie inferred that the petitioner and the Dy. Registrar with an intention to benefit Ramesh Agrawal so that he is not required

to pay stamp duty payable for transfer of commercial plot as per guidelines of the Collector has held that there is prima facie evidence available in the charge sheet on the basis of which charges under Section 420, 468, 471 and 120B of I.P.C. is prima facie made out.

6. In the matter of State of Haryana -v- Ch. Bhajan Lal, the Hon'ble Supreme Court has held that :-

"In the following categories of cases, the High Court may in exercise of powers under Art. 226 of the Constitution of India or under S. 482 of Cr.P.C. may interfere in proceedings relating to cognizable offences to prevent abuse of the process of any Court or otherwise to secure the ends of justice. However, power should be exercised sparingly and that too in the rarest of rare cases.

1) *Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*

2) *Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under S. 156(1) of the Code except under an order of a Magistrate within the purview of S. 155(2) of the Code.*

3) *Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*

4) *Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under S. 155(2) of the Code.*

5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

The Supreme Court has further held that :-

"Where allegations in the complaint did constitute a cognizable offence justifying registration of a case and investigation thereon and did not fall in any of the categories of cases enumerated above, calling for exercise of extraordinary powers or inherent powers quashing of FIR was not justified."

7. In the instant case, the Courts below considering the documentary evidence - Maintenance Khasra admittedly supplied by the petitioner - available in the charge sheet have recorded a prima facie satisfaction that the ingredients of the above offence are available and accordingly framed charges. The case in hand does not fall within the categories mentioned in the above judgment and therefore, ratio of the above law is not applicable in the present case.

8. In the matter of Jitendra Kumar Jain (supra), considering the fact of that case that the petition under Section 482 of Cr.P.C. was rejected by the High Court on the ground

that the revision against the impugned order was already rejected by the Sessions Judge and revision was filed in the garb of petition under Section 482 of Cr.P.C. which is barred under Section 397(3) of the Code, the Hon'ble Supreme Court set aside the order of the High Court and remitted the matter back to the High Court for reconsideration. However, in the instant case, after going through the record, this Court is of the opinion that the Additional Sessions Judge by the impugned order has rightly rejected the criminal revision with the finding that the framing of charge is based on documentary evidence available on record.

9. So far as the report of the petitioner wherein he has submitted that Maintenance Khasra was in fact fabricated by others by erasing the location of property given by the petitioner and substituting the same with 'Imlipara' and the other ground that the Board of Revenue has set aside the order of Collector of Stamps by which penalty was imposed on the basis of under valuation, is concerned, the same is matter of defence and that can be raised at appropriate stage by the petitioner and the same cannot be considered at this stage in a petition under Section 482 of Cr.P.C.

10. In the result, the petition being devoid of substance, is liable to be dismissed and it is accordingly dismissed.

Sd/-
DHIRENDRA MISHRA
Judge